**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ZAPMEDIA SERVICES, INC.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 2:08-CV-104-DF-CE**
	§	
APPLE INC.	§	**JURY TRIAL DEMANDED**
	§	
Defendant	§	

**DEFENDANT APPLE INC.'S ANSWER, AFFIRMATIVE DEFENSES,
AND COUNTERCLAIMS TO PLAINTIFF'S ORIGINAL COMPLAINT**

Defendant Apple Inc. (formerly Apple Computer, Inc.) ("Apple") states the following as its Answer to Plaintiff ZapMedia Services, Inc.'s ("ZapMedia") Original Complaint:

ANSWER

THE PARTIES

1. Apple lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 1 of the Complaint, and therefore denies the same.

2. Apple admits that Apple is a corporation duly organized and existing under the laws of the state of California with its principal place of business located at 1 Infinite Loop, Cupertino, California 95014. Apple admits that it has a place of business at 12535 Riata Vista Circle, Austin, Texas 78727. Apple admits that it may be served through its registered agent for service of process in Texas, CT Corporations System, 350 N. St. Paul Street, Dallas, Texas 75201. Apple admits that it is authorized to, and transacts business in, the State of Texas, including in the Eastern District of Texas. Except as expressly admitted, Apple otherwise denies each and every allegation in Paragraph 2.

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JURISDICTION AND VENUE

3. Apple admits that the Complaint purports to state claims arising under the Patent and Trademark Act, 35 U.S.C. § 1 *et. seq.* but denies that there is any basis for ZapMedia's Complaint. Except as expressly admitted, Apple otherwise denies each and every allegation in Paragraph 3.

4. Apple admits that this Court has subject matter jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1338. Except as expressly admitted, Apple otherwise denies each and every allegation in Paragraph 4.

5. Apple admits that, under 28 U.S.C. §§ 1391(b) and (c) and 1400(b), this judicial district is a proper venue for this action. Except as expressly admitted, Apple otherwise denies each and every allegation in Paragraph 5.

PATENT INFRINGEMENT

6. Apple admits that U.S. Patent No. 7,020,704 ("the '704 Patent") indicates on its face that it issued on March 28, 2006. Apple also admits that a copy of the '704 Patent was attached to the Complaint as **Exhibit A**. Apple lacks knowledge or information sufficient to form a belief regarding the allegation that "ZapMedia is the owner by assignment of all right, title and interest in and to the '704 patent, including all right to recover for any and all past infringement thereof," and therefore denies the same. Except as expressly admitted, Apple otherwise denies each and every allegation in Paragraph 6.

7. Apple admits that U.S. Patent No. 7,343,414 ("the '414 Patent") indicates on its face that it issued on March 11, 2008. Apple further admits that a copy of the '414 Patent was attached to the Complaint as **Exhibit B**. Apple further admits that the '414 Patent indicates on its face that

ZapMedia, Inc. of Atlanta, Georgia is the assignee. Except as expressly admitted, Apple otherwise denies each and every allegation in Paragraph 7.

8. Apple denies all of the allegations contained in Paragraph 8.

9. Apple denies all of the allegations contained in Paragraph 9.

10. Apple denies all of the allegations contained in Paragraph 10.

11. Apple denies all of the allegations contained in Paragraph 11.

12. Apple denies all of the allegations contained in Paragraph 12.

ANSWER TO ZAPMEDIA'S PRAYER FOR RELIEF

13. Apple denies all allegations therein and further denies that any relief should be granted to ZapMedia.

AFFIRMATIVE DEFENSES

First Affirmative Defense
Noninfringement of the '704 Patent

14. Apple incorporates by reference Paragraphs 1 - 13 above in their entirety.

15. Apple has not infringed, and is not infringing, whether directly or indirectly, literally or by equivalents, any valid and enforceable claim of the '704 Patent.

Second Affirmative Defense
Invalidity of the '704 Patent

16. Apple incorporates by reference Paragraphs 1 - 15 above in their entirety.

17. ZapMedia's '704 Patent is invalid, in whole or in part, for failure to satisfy the conditions of patentability set forth in the Title 35 of the United States Code, including, without limitation, §§ 101, 102, 103, and 112, and ZapMedia's claims for relief are thus barred in whole or in part.

Third Affirmative Defense
Noninfringement of the '414 Patent

18. Apple incorporates by reference Paragraphs 1 - 17 above in their entirety.

19. Apple has not infringed, and is not infringing, whether directly or indirectly, literally or by equivalents, any valid and enforceable claim of the ‘414 Patent.

Fourth Affirmative Defense
Invalidity of the ‘414 Patent

20. Apple incorporates by reference Paragraphs 1 - 19 above in their entirety.

21. ZapMedia’s ‘414 Patent is invalid, in whole or in part, for failure to satisfy the conditions of patentability set forth in the Title 35 of the United States Code, including, without limitation, §§ 101, 102, 103, and 112, and ZapMedia’s claims for relief are thus barred in whole or in part.

Fifth Affirmative Defense
Notice

22. Apple incorporates by reference Paragraphs 1 - 21 above in their entirety.

23. ZapMedia’s claims for relief and prayer for damages are limited by 35 U.S.C. § 287.

Sixth Affirmative Defense
Prosecution History Estoppel

24. Apple incorporates by reference Paragraphs 1 - 23 above in their entirety.

25. The claims of each of the ‘704 and ‘414 Patents are so limited by the prior art, by their terms, and/or by representations made to the United States Patent and Trademark Office during prosecution of the applications which resulted in the ‘704 and ‘414 Patents, that none of the claims of either of the ‘704 or ‘414 Patents are infringed by Apple.

Seventh Affirmative Defense
Adequate Remedy at Law

26. ZapMedia has an adequate remedy at law, and no basis exists for the grant of equitable relief.

Eight Affirmative Defense
Limitation on Recovery of Costs

27. On information and belief, ZapMedia is precluded from seeking recovery of its costs under 35 U.S.C. § 288.

COUNTERCLAIMS

28. Apple asserts upon information and belief the following counterclaims against ZapMedia. Apple hereby incorporates by reference Paragraphs 1 - 27 above in their entirety.

29. Apple seeks declarations of invalidity and non-infringement of the '704 and '414 Patents. Accordingly, jurisdiction is proper pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, under federal question jurisdiction pursuant to 28 U.S.C. §1331, and pursuant to the Patent Laws of the United States, Title 35, United States Code.

30. ZapMedia claims an ownership interest in each of the '704 and '414 Patents and has asserted that Apple has infringed at least one claim of each of the '704 and '414 Patents.

31. This Court has personal jurisdiction over ZapMedia.

32. Venue in this district is proper with regards to these counterclaims pursuant to 28 U.S.C. §§ 1391 and 1400.

FIRST COUNTERCLAIM FOR RELIEF
Declaration of Invalidity of the '704 Patent

33. Apple re-alleges and incorporates by reference Paragraphs 1 through 32 above in their entirety.

34. As a result of ZapMedia's allegations of infringement against Apple, an actual controversy exists regarding the validity of the '704 Patent.

35. The '704 Patent is invalid for failure to comply with one or more provisions of Title 35, including §§ 101, 102, 103, and/or 112.

36. As a result, Apple is entitled to judgment from this Court finding that the ‘704 Patent is invalid.

37. On information and belief, when ZapMedia brought this action, it knew, or should have known, that the ‘704 Patent is invalid.

38. This counterclaim presents exceptional circumstances within the meaning of 35 U.S.C. § 285 and Apple is thus entitled to an award of its reasonable attorneys’ fees.

SECOND COUNTERCLAIM FOR RELIEF
Declaration of Non-Infringement of the ‘704 Patent

39. Apple re-alleges and incorporates by reference Paragraphs 1 through 38 above in their entirety.

40. As a result of ZapMedia’s allegations of infringement against Apple, an actual controversy exists regarding whether Apple has infringed the ‘704 Patent.

41. Apple has not infringed, whether directly or indirectly, literally or by equivalents, any valid or enforceable claim of the ‘704 Patent. Therefore, Apple is not liable for any infringement of the ‘704 Patent.

42. Accordingly, Apple is entitled to judgment from this Court finding that the ‘704 Patent is not infringed and has not been infringed by Apple.

43. On information and belief, when ZapMedia brought this action, it knew, or should have known, that the ‘704 Patent was not infringed by Apple.

44. This counterclaim presents exceptional circumstances within the meaning of 35 U.S.C. § 285 and Apple is thus entitled to an award of its reasonable attorneys’ fees.

THIRD COUNTERCLAIM FOR RELIEF
Declaration of Invalidity of the ‘414 Patent

45. Apple re-alleges and incorporates by reference Paragraphs 1 through 44 above in their entirety.

46. As a result of ZapMedia's allegations of infringement against Apple, an actual controversy exists regarding the validity of the '414 Patent.

47. The '414 Patent is invalid for failure to comply with one or more provisions of Title 35, including §§ 101, 102, 103, and/or 112.

48. As a result, Apple is entitled to judgment from this Court finding that the '414 Patent is invalid.

49. On information and belief, when ZapMedia brought this action, it knew, or should have known, that the '414 Patent is invalid.

50. This counterclaim presents exceptional circumstances within the meaning of 35 U.S.C. § 285 and Apple is thus entitled to an award of its reasonable attorneys' fees.

FOURTH COUNTERCLAIM FOR RELIEF
Declaration of Non-Infringement of the '414 Patent

51. Apple re-alleges and incorporates by reference Paragraphs 1 through 50 above in their entirety.

52. As a result of ZapMedia's allegations of infringement against Apple, an actual controversy exists regarding whether Apple has infringed the '414 Patent.

53. Apple has not infringed, whether directly or indirectly, literally or by equivalents, any valid or enforceable claim of the '414 Patent. Therefore, Apple is not liable for any infringement of the '414 Patent.

54. Accordingly, Apple is entitled to judgment from this Court finding that the '414 Patent is not infringed and has not been infringed by Apple.

55. On information and belief, when ZapMedia brought this action, it knew, or should have known, that the '414 Patent was not infringed by Apple.

56. This counterclaim presents exceptional circumstances within the meaning of 35 U.S.C. § 285 and Apple is thus entitled to an award of its reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Apple prays for judgment against ZapMedia as follows:

a. For dismissal of ZapMedia's Complaint with prejudice;

b. For a judgment declaring that Apple has not infringed and does not infringe directly, contributorily, or by inducement any claim of the '704 Patent;

c. For a judgment declaring that Apple has not infringed and does not infringe directly, contributorily, or by inducement any claim of the '414 Patent;

d. For a judgment declaring that each and every claim of the '704 Patent is invalid;

e. For a judgment declaring that each and every claim of the '414 Patent is invalid;

f. For an order deny any and all of ZapMedia's requests for injunctive relief;

g. For an award of reasonable attorneys' fees and expenses against ZapMedia pursuant to 35 U.S.C. § 285;

h. For Apple's costs of suit against ZapMedia pursuant to 35 U.S.C. § 284; and

i. For such other and further relief as this Court may deem just and proper.

Respectfully Submitted,

May 2, 2008

/s/ Lou Brucculeri

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ATTORNEYS FOR DEFENDANT APPLE INC.

CERTIFICATE OF SERVICE

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served today, May 2, 2008 with a copy of Defendant Apple, Inc.'s Answer, Affirmative Defenses and Counterclaims to Plaintiff's Original Complaint via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ Wayne P. Maydwell